IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1889 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PATEL POPATLAL KARSAN KHETANI - Appellant(s)
Versus
ABDULSATTAR FAKIR MOHMED & 2 - Defendant(s)

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Appearance :
MR CH VORA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 19.01.90 passed by the Motor Accidents Claims Tribunal (Aux) at Surendranagar in MACP No. 160 of 1984 whereby the Tribunal has awarded Rs. 54,300/- by wayo of compensation to the original claimant payable by the original opponent nos. 1 & 2.

2. The original claimant-respondent no.1 herein had filed claim petition claiming compensation to the

tune of Rs. 1,00,000/- in respect of an accident which occurred on 08.03.84 on the highway at a distance of about 20 kms from Limbdi while the original claimant was travelling as a conductor in truck bearing no. GTY 3178. As a result of the rash and negligent driving of the driver, the truck turtled, thereby causing injuries to the claimant. The claim petition came to be filed under the said circumstances. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in not appreciating the oral as well as documentary evidence on record. He has further contended that the Tribunal has erred in holding that the Insurance Company-original opponent no.3 is not liable and has thereby not properly appreciated the cover note.

4. Heard learned counsel and gone through the documents placed on record. It is clearly borne out from the records that the Tribunal has gone into the evidence in detail, more particularly, the cover note

to come to the conclusion that the insurance company cannot be held responsible to answer the claim of the original claimant. Though the original opponent no.2-present appellant prevented himself from producing the original cover note of the insurance contract, the same when produced by the insurance company revealed that the contract of insurance commenced from 09.03.84. The Tribunal in para 24 of the award has specifically observed that the present appellant himself has admitted that there was no contract of insurance existing on 08/03/84 i.e on the day of accident but the same came into being only on 09.03.84. In that view of the matter I am of the view that the insurance company cannot be held liable for compensation.

4.1 Moreover, in para 38 of the award the Tribunal has observed that the xerox copy of the cover note produced by the original opponent no.2-present appellant showed erasures, over-writing in respect of date of commencement and date of expiry of the insurance. The present appellant did not produce the original copies even on insistence and on the overall

facts and circumstances of the case the Tribunal concluded that the original opponent had built a false case of commencement of contract on 08.03.84. I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and therefore see no reason for interference in the award.

5. In the premises aforesaid, the appeal is required to be dismissed and the same is accordingly dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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